

**California Regional Water Quality Control Board
Santa Ana Region**

RESOLUTION NO. R8-2007-0024

DRAFT

**Resolution Amending the Water Quality Control Plan for the Santa Ana River
Basin to Incorporate Organochlorine Compounds
Total Maximum Daily Loads (TMDLs) for San Diego Creek,
Upper and Lower Newport Bay, Orange County**

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter, Regional Board), finds that:

1. An updated Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) was adopted by the Santa Ana Regional Water Quality Control Board (Regional Board) on March 11, 1994, approved by the State Water Resources Control Board (SWRCB) on July 21, 1994, and approved by the Office of Administrative Law (OAL) on January 24, 1995.
2. The Basin Plan specifies the following beneficial uses for San Diego Creek, Reach 1: water contact recreation (REC1); non-contact water recreation (REC2); warm freshwater habitat (WARM); and wildlife habitat (WILD).
3. The Basin Plan specifies the following intermittent beneficial uses for San Diego Creek, Reach 2: water contact recreation (REC1); non-contact water recreation (REC2); warm freshwater habitat (WARM); wildlife habitat (WILD); and groundwater recharge (GWR).
4. The Basin Plan specifies the following beneficial uses for Upper Newport Bay: water contact recreation (REC1); non-contact water recreation (REC2); commercial and sportsfishing (COMM); preservation of biological habitats of special significance (BIOL); spawning, reproduction, and development (SPWN); wildlife habitat (WILD); rare, threatened, or endangered species (RARE); marine habitat (MAR); shellfish harvesting (SHEL); and estuarine habitat (EST).
5. The Basin Plan specifies the following beneficial uses for Lower Newport Bay: water contact recreation (REC1); non-contact water recreation (REC2); commercial and sportsfishing (COMM); spawning, reproduction, and development (SPWN); wildlife habitat (WILD); rare, threatened, or endangered species (RARE); marine habitat (MAR); shellfish harvesting (SHEL); and navigation (NAV).
6. The Basin Plan specifies the following narrative water quality objectives pertaining to toxic substances applicable to inland surface waters and enclosed bays and estuaries: 1) *Toxic substances shall not be discharged at levels that*

will bioaccumulate in aquatic resources to levels which are harmful to human health; and, 2) The concentrations of toxic pollutants in the water column, sediments or biota shall not adversely affect beneficial uses.

7. Data obtained from the State Mussel Watch Program, Toxic Substances Monitoring Program, and other water quality monitoring programs provided evidence that one or more of these narrative objectives for toxic pollutants are being or may be violated. Accordingly, the Regional Board place Upper and Lower Newport Bay and San Diego Creek on the Clean Water Act (CWA) §303(d) list, triggering the need for development and implementation of Total Maximum Daily Loads (TMDLs) or other equally effective control actions. The purpose of the TMDLs is to assure that water quality standards are achieved. State law requires that an implementation plan accompany the TMDLs to describe the actions that are to be taken, together with a compliance schedule, if appropriate, to insure that the TMDLs are met and that compliance with water quality standards is achieved.
8. On June 14, 2002, in response to a consent decree, the U.S. Environmental Protection Agency (USEPA) promulgated technical TMDLs for toxic pollutants in Upper and Lower Newport Bay and San Diego Creek that included the organochlorine compounds. Consistent with CWA §303(d), USEPA evaluated all readily available data for San Diego Creek and Newport Bay, and used a weight of evidence approach to independently determine which organochlorine compounds warranted TMDLs.
9. Subsequent to the USEPA promulgation of technical TMDLs, the State Water Resources Control Board (SWRCB) adopted the "Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List" (State Listing Policy) in September 2004. The State Listing Policy specifies a methodology for placing a water body on the CWA §303(d) list differing from that used by the USEPA. Regional Board staff applied the State Listing Policy methodology to relevant data, including data that became available subsequent to USEPA's development of technical TMDLs, and updated the water quality impairment listings for San Diego Creek and Upper and Lower Newport Bay. Accordingly, the organochlorine compound-waterbody combinations for which the USEPA promulgated TMDLs differ from those identified by Regional Board staff.
10. Pursuant to Clean Water Act §303(d)(3), the Regional Board has developed TMDLs for DDT and toxaphene for San Diego Creek and tributaries; chlordane, DDT, and PCBs for Upper Newport Bay; and, chlordane, DDT, and PCBs for Lower Newport Bay. In addition, the Regional Board developed informational TMDLs for chlordane and PCBs for San Diego Creek and tributaries. While impairment due to these constituents was not found in San Diego Creek, the informational TMDLs are appropriate because San Diego Creek is the largest

source of organochlorine compounds to Newport Bay. No action to implement the informational TMDLs is required but the informational TMDLs may forward action to address downstream chlordane and PCBs impairments.

11. The Basin Plan amendment shown in the attachment to this Resolution was developed in accordance with Clean Water Act §303(d) and Water Code Section 13240 *et seq.* The amendment is proposed for incorporation into Chapter 5 “Implementation”, of the Basin Plan. The proposed Basin Plan amendment includes background information concerning the water quality impairment being addressed and the sources of organochlorine compounds to San Diego Creek and Upper and Lower Newport Bay. The proposed TMDLs are supported by a detailed report prepared by Regional Board staff and titled “Total Maximum Daily Loads for Organochlorine Compounds, San Diego Creek: Total DDT and Toxaphene. Upper and Lower Newport Bay: Total DDT, Chlordane, Total PCBs”, November 17, 2006 (hereinafter, “TMDL Report”).
12. The Basin Plan amendment will assure the reasonable protection of the beneficial uses of surface waters within the Region and is consistent with the State antidegradation policy (SWRCB Resolution No. 68-16).
13. The Regional Board has considered the costs associated with implementation of this amendment, as well as the costs resulting from failure to implement organochlorine compound control measures necessary to prevent adverse effects on beneficial uses. The implementation plan in the Basin Plan, which includes extended compliance schedules and employs a phased TMDL approach to provide for refinement based on additional studies and analyses, will ensure that implementation expenditures are reasonable and fairly apportioned among dischargers.
14. Review of the potential environmental impacts of the adoption and implementation of the San Diego Creek and Upper and Lower Newport Bay organochlorine compounds TMDLs was conducted. The adoption of the TMDLs would have no direct effect on the environment. The implementation of projects that may be conducted to implement the organochlorine compounds TMDLs is expected to have less than significant impacts or less than significant impacts with application of mitigation measures on the following: air quality, biological resources, hazards and hazardous materials, hydrology and water quality, noise, aesthetics and transportation and traffic. As projects to implement the TMDLs are developed, specific environmental impacts and mitigation measures to address those impacts are subject to thorough and separate evaluation pursuant to the California Environmental Quality Act (CEQA).
15. Provided that appropriate mitigation is implemented, projects designed and conducted to achieve the TMDLs are expected to have less than significant impact, either individually or cumulatively, on fish and/or wildlife species.

16. The adoption of these TMDLs is necessary to reduce loadings of organochlorine compounds to San Diego Creek, and Upper and Lower Newport Bay, and address water quality impairments that arise therefrom.
17. The proposed amendment meets the "Necessity" standard of the Administrative Procedure Act, Government Code, Section 11352, subdivision (b).
18. The Regional Board submitted the relevant technical documents that serve as the basis for the proposed amendment to an external scientific review panel and has considered the comments and recommendations of that panel in drafting the amendment.
19. The proposed amendment will result in revisions to the Basin Plan Chapter 5 "Implementation".
20. The Regional Board discussed this matter at a workshop conducted on December 1, 2006 after notice was given to all interested persons in accordance with Section 13244 of the California Water Code. Based on the discussion at those workshops, the Board directed staff to prepare the appropriate Basin Plan amendment and related documentation to incorporate the San Diego Creek and Upper and Lower Newport Bay organochlorine compounds TMDLs.
21. The Regional Board prepared and distributed written reports (staff reports) regarding adoption of the Basin Plan amendment in accordance with applicable state and federal environmental regulations (California Code of Regulations, Section 3775, Title 23, and 40 CFR Parts 25 and 131).
22. The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report (EIR) or Negative Declaration (ND). The Basin Plan Amendment package includes the Basin Plan amendment, staff reports, an Environmental Checklist, an assessment of the potential environmental impacts of the Basin Plan amendment, and a discussion of alternatives. These documents serve as substitute environmental documents.
23. On March 2, 2007, the Regional Board held a Public Hearing to consider the Basin Plan amendment. Notice of the Public Hearing was given to all interested persons and published in accordance with Water Code Section 13244.
24. The Basin Plan amendment must be submitted for review and approval by the State Water Resources Control Board (SWRCB), Office of Administrative Law (OAL) and U.S. Environmental Protection Agency (USEPA). Once approved by the SWRCB, the amendment is submitted to OAL and USEPA. The Basin Plan amendment will become effective upon approval by OAL. A Notice of Decision will be filed.

25. The Notice of Filing, Notice of Public Hearing, the TMDL Report, environmental checklist, and the draft amendment were prepared and distributed to interested individuals and public agencies for review and comment, in accordance with state and federal regulations (23 CCR §3775, 40 CFR 25 and 40 CFR 131).
26. For the purposes of specifying compliance schedules in NPDES permits for effluent limitations necessary to implement these TMDLs, the schedules specified in these TMDLs shall govern, notwithstanding other compliance schedule authorization language in the Basin Plan.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Regional Board adopts the amendment to the Water Quality Control Plan for the Santa Ana River Basin (Region 8), as set forth in the attachment.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirements of Section §13245 of the California Water Code.
3. The Regional Board requests that the SWRCB approve the Basin Plan amendment, in accordance with Sections §13245 and §13246 of the California Water Code, and forward it to the OAL and U.S. EPA for approval.
4. If, during its approval process, Regional Board staff, SWRCB or OAL determines that minor, nonsubstantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
5. The Executive Officer is authorized to sign a Certificate of Fee Exemption in lieu of payment of the California Department of Fish and Game filing fee.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on March 2, 2007.

Gerard J. Thibeault
Executive Officer